**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 10324 of 2001**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KL CHUHAN - Petitioner(s)**
**Versus**
**SECTION OFFICER & 2 - Respondent(s)**

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**Appearance :**
MR DP VORA for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s) : 1 - 3.
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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 23/03/2006**

**ORAL JUDGMENT**

1.The petitioner was initially appointed as a Peon in the Government service in the year 1977. He has challenged the the order dated 3rd October, 2001 by which the

Government withdrew the benefit of higher pay-scale granted to him in the cadre of Typist. As noted, the petitioner was appointed in the year 1977 as Peon. For the post of Typist since the petitioner was qualified having necessary experience of four years and also typing skills, he was promoted by an order dated 30th April 1991.

2. The Government initially formulated a scheme for grant of higher pay-scale on stagnation of 9, 18 and 27 years of service by Government resolution dated 5.7.91. Subsequently, the said scheme was modified as the Government found that the financial burden flowing therefrom is not possible to bear. Therefore, a fresh resolution came to be issued on 16.8.94 and certain conditions for grant of higher pay-scales were made more stringent. The present petition is not directly concerned with these changes. Suffice it to say that the employees were required to be considered for first higher pay-scale after 9 years of stagnation in the same grade with effect from 1.6.87. It appears that the petitioner was not granted any such benefits. The petitioner when completed 9 years of service in the grade of Typist, requested the authorities to grant him higher pay-scale. His request was accepted and by

the order dated 22nd May 2000, he was placed in the scale of Rs.5500-9000 with effect from 1.5.2000 since the Authorities found that he completed 9 years of service in the grade of Typist on that day having been promoted on 1.5.91.

3. The Authorities, however, subsequently by the impugned order dated 3rd October, 2001 withdrew the benefits granted to the petitioner from its inception. Learned advocate for the petitioner Shri Vora submitted that the Authorities passed the said order without giving an opportunity of being heard to the petitioner, that the petitioner was correctly granted the benefit of higher pay-scale in the grade of Typist, that the respondents ought not to have withdrawn the said benefits on account of which the petitioner is receiving substantially lesser pay than his juniors.

4. The Government has appeared and filed affidavit in reply. It is suggested that the petitioner completed 9 years of service on the post of Peon and upgradation ought to have on the next higher grade from that position and the petitioner was wrongly granted the higher pay-scale considering the stagnation of 9 years on the post of Typist.

5. I do not propose to go into the validity of the rival

contentions. Learned advocate for the petitioner submitted that the petitioner was not given any opportunity of being heard and the Department ought to have either issued a show cause notice or at least given a reasonable opportunity of being heard to the petitioner before passing the impugned order which results into adverse civil consequences against the petitioner. Reliance was placed on the decision of this Court dated 17.6.2003 passed in Special Civil Application No.9267 of 2002 in similar circumstances.

6. It is not in dispute that no hearing was given to the petitioner before the Authorities decided to withdraw the higher pay-scale granted to him. Number of issues would have to be gone into before concluding the question of withdrawal of higher pay-scale from the petitioner. Reliance placed by the learned advocate for the petitioner on the above decision of this Court also would persuade me to ensure that the petitioner is heard by the Government before any adverse order in this regard is passed.

7. In the result, the impugned order dated 3rd October, 2001 is quashed. The respondents shall permit the petitioner to make a fresh representation within a period of two weeks from today. If such representation

is made, the same shall be considered and disposed of in accordance with law preferably within a period of three months of its receipt. Until such time the representation is decided, there will be no recovery from the petitioner for the alleged overpayment made. If the ultimate decision is adverse to the petitioner, it will be open for him to have recourse in accordance with law. With these directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)